



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

MASSANUTTEN PUBLIC SERVICE CORPORATION

(VPDES Permit No. VA0024732)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Massanutten Public Service Corporation, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "2002 Order" means the consent special order that became effective April 8, 2002.
7. "Amendment" means the amendment to the 2002 Order that became effective September 1, 2004.
8. "STP" means sewage treatment plant.
9. "Massanutten" means Massanutten Public Service Corporation, which owns and operates the Massanutten Public Service Corporation STP.
10. "Facility" and "Plant" means the Massanutten STP located in Rockingham County, Virginia.
11. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
12. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0024732 issued to Massanutten, which became effective November 20, 2000 and expires November 20, 2005. Permit limits include pH, biochemical oxygen demand ["BOD"], total suspended solids ["TSS"], dissolved oxygen ["D.O."], ammonia, and total residual chlorine ["TRC"].
13. "NOV" means Notice of Violation.
14. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
15. "VDH" means Virginia Department of Health
16. "P.E.R." means Preliminary Engineering Report.
17. "O&M" means Operations and Maintenance.
18. "I&I" means Inflow and Infiltration.
19. "SMP" means Sludge Management Plan
20. "CTO" means Certificate to Operate.
21. "TMP" means Toxicity Monitoring Program.
22. "TRE" mean Toxicity Reduction Evaluation.
23. "EQ basin" means equalization basin.
24. "MGD" means million gallons per day.

SECTION C: Findings of Fact and Conclusions of Law

1. The 2002 Order required Massanutten to complete the construction of Facility upgrade by May 15, 2003, to meet final effluent limitations and to conduct acute and chronic confirmational toxicity testing after the completion of the new Facility.
2. On August 16, 2002, the Virginia Department of Health conditionally approved the plans and specifications for the Facility upgrade. One of the conditions of that approval was that as-built plans and specifications were to be submitted to and approved by the Virginia Department of Health prior to issuance of a CTO for the upgraded Facility.
3. The Amendment to the 2002 Order provided additional time for Massanutten to submit approvable as-built plans and specifications and complete construction of the Facility upgrade including the second flow equalization basin. The Amendment required Massanutten to submit approvable plans and specifications for the upgraded Facility by January 31, 2005.
4. Following Massanutten's signing the Amendment on July 6, 2004, it submitted numerous versions of the as-built plans and specifications both before and after the January 31, 2005 due date for submittal of approvable plans and specifications.
5. DEQ issued a NOV on May 10, 2005, to Massanutten for violations of the Amendment's schedule of compliance including failure to submit approvable as-built plans and specifications for the upgraded Facility. The NOV also cited Permit violations for failure to sample and report total cyanide and di-2-ethylhexyl phthalate and failure to address technical inspection deficiencies in a timely manner in accordance with Permit requirements. (Note: total cyanide and di-2-ethylhexyl phthalate were later removed from the Permit).
6. Massanutten has been in compliance with the Permit's effluent limitations since May 2003.
7. On June 16, 2005, DEQ met with Massanutten in an informal conference to discuss the NOV, the status of the completion of the new Facility and the submittal of as-built plans and specifications for the new Facility. During the June 16, 2005, meeting, DEQ requested that Massanutten submit plans and schedules to address all of the outstanding issues regarding the new Facility.
8. By letters dated July 8 and September 15, 2005, Massanutten submitted to DEQ a revised plan and schedule of compliance for completion of the Facility upgrade. Sections of this plan and schedule have been incorporated into Appendix A of this Order.
9. Massanutten has made substantial progress in completing the upgraded Facility, but it did not submit approvable plans and specifications by January 31, 2005 or request a

conditional CTO by February 28, 2005, as required by the Amendment. The other ancillary problems cited in the NOV such as the inspection and reporting deficiencies have been resolved. The requirement to report total cyanide and di-2-ethylhexyl phthalate was subsequently dropped from the Permit and Massanutten has addressed the inspection deficiencies by changing certain operational procedures.

10. On September 16, 2005, Massanutten reported to DEQ a discharge of activated sludge to Quail Run. On September 16, 2005, DEQ staff conducted an inspection of the Facility and observed an ongoing sludge spill to Quail Run. DEQ advised Massanutten to dam and pump accumulated sludge from the stream.
11. On September 19, 2005, DEQ staff continued the investigation of the activated sludge spill and observed activated sludge in Quail Run for a distance of approximately 1000 feet downstream from the Facility. Massanutten estimated that 60,000-80,000 gallons of mixed liquor was lost in the event. During the September 19, 2005 inspection, DEQ staff noted that Massanutten was in the process of sweeping and pumping solids from the stream. Massanutten also indicated that a small fish kill was noted during the cleanup of the stream. The release occurred when tape covering the end of a drain line for an activated sludge basin gave way. Apparently, this drain line was taped and buried to protect it during the Facility's construction, but unlike the other six drain lines, it was never uncovered to properly install a valve and valve box. Massanutten completed the cleanup of the activated sludge in the stream and installed the valve and valve box.
12. On October 28, 2005, Massanutten reported to DEQ a break in a force main that led to an unauthorized discharge of approximately 200 gallons of wastewater/sewage to surface waters. This discharge was apparently composed primarily of backwash water from the water treatment plant with some raw sewage. Massanutten took prompt action to cleanup the spill and repair the line.
13. On November 1, 2005, Massanutten submitted to DEQ for review and approval another version of the as-built plans and specifications for the Facility upgrade. To date, however, Massanutten has not received a CTO for the Facility upgrade required by the Amendment.
14. On November 9, 2005, DEQ issued NOV No. W2005-11-V-0004 to Massanutten citing the September 16, 2005, unauthorized/unpermitted discharge of solids to State water which had an adverse impact on water quality. The NOV also cited the unauthorized discharge of approximately 200 gallons of wastewater to State waters that occurred on September 26, 2005. The October 28, 2005 unpermitted discharge was not included within the November 9, 2005 NOV.
15. On November 22, 2005, Massanutten diverted approximately 0.5 MG of wastewater to the new EQ basin which is presently under construction. The use of the EQ basin has not been authorized through the issuance of a Certificate to Operate since the unit is still under construction. Massanutten asserts that the diversion was necessary due to a

high rainfall event and was more environmentally protective since the action prevented the overflow of wastewater from the treatment plant.

16. On November 29, 2005, Massanutten experienced unauthorized/unpermitted discharges of wastewater from the Facility and Massanutten again diverted approximately 0.5 MG of wastewater to the new EQ basin. Massanutten asserts that the diversion was necessary due to a high rainfall event and was more environmentally protective since the action reduced the amount and duration of overflows of wastewater from the treatment plant.
17. On January 3, 2006, Massanutten began the unauthorized operation (before receiving a CTO) of the second treatment train of the Facility. Massanutten asserts that the use of the second treatment train was necessary to treat the Facility's higher influent flows and compensate for operational problems due in part to filamentous growth. Massanutten asserts that the use of the second treatment train would allow the Facility to treat more influent more quickly and thus reduce the time the EQ basin would be utilized so that the EQ basin work could be completed more expeditiously. Massanutten asserts that without the use of the second treatment train to treat the additional influent, the high influent flows and reduced treatment efficiency could increase the delays in completing the EQ basin work and/or lead to effluent limitation exceedances. The Facility's high influent flows are also attributable to additional commercial connections and changes in seasonal use (i.e. from vacation to ski).

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Massanutten, and Massanutten agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Massanutten, and Massanutten voluntarily agrees, to pay a civil charge of **\$19,700** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Massanutten shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. This Order cancels and supersedes the April 8, 2002 Order and the September 1, 2004 Amendment.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Massanutten, for good cause shown by Massanutten, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Massanutten admits the jurisdictional allegations contained herein, and neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Massanutten consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Massanutten declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Massanutten to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Massanutten shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Massanutten shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Massanutten shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may


delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Massanutten intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Massanutten. Notwithstanding the foregoing, Massanutten agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Massanutten petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Massanutten.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Massanutten from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Massanutten certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Massanutten to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Massanutten.
13. By its signature below, ~~the Town of~~ Massanutten voluntarily agrees to the issuance of this Order.


And it is so ORDERED this 20 day of March, 2006.

R. Bradley Chewing
Robert G. Burnley, Director DAVID K. PAYLOR
Department of Environmental Quality

Massanutten Public Service Corporation voluntarily agrees to the issuance of this Order.

By: [Signature]

Title: Regional Vice President

Date: 1/17/2006

North Carolina
State of Virginia
City/County of Mecklenburg

The foregoing instrument was acknowledged before me this 17th day of January, 2006.

by Carl Daniel who is Regional VP of
(name) (title)

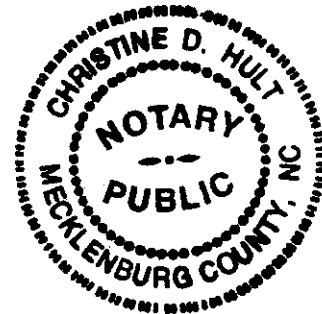
Massanutten Public Service Corporation, on behalf of said company.

January 17, 2006
Date

Christine D. Hult
Notary Public

My commission expires:

SEP 26 2009



**APPENDIX A
SCHEDULE OF COMPLIANCE
MASSANUTTEN PUBLIC SERVICE CORPORATION**

As-built plans and specifications

1. On November 1, 2005, Massanutten submitted to DEQ for review and approval another version of the as-built plans and specifications. Massanutten shall respond to any comments on the as-built plans and specifications **within 30 days** of receipt of written comments.

Completion of Second Equalization Basin

2. Massanutten has submitted to DEQ for review and approval the engineering plans and specification for the second equalization basin. Massanutten shall respond to comments regarding the plans and specifications **within 30 days** of receipt of written comments.
3. **By April 30, 2006**, Massanutten shall complete the installation of the equalization basin liner and the aeration equipment and pumps.
4. **By May 31, 2006**, Massanutten shall complete all work necessary for issuance of the CTO and request a CTO inspection for the entire Facility upgrade.
5. **Within 365 days** following issuance of a CTO for the upgraded Facility, Massanutten shall complete acute and chronic confirmational toxicity testing. The acute and chronic confirmational toxicity testing shall be conducted on four separate sets of 24-hour composite samples of effluent from Outfall 001, not to be conducted more frequently than monthly, and shall include samples collected during the months of August and February. A testing lab having applicable, approved toxicity testing protocols on file with DEQ shall do the confirmational toxicity testing. The acute toxicity testing shall be a “no observable adverse concentrations (acute) (“NOAEC”)” test with a passing end point of 100% effluent, rather than the LC50 tests, which were used in earlier acute toxicity testing of this Facility’s discharge. In order to successfully complete confirmational toxicity testing, all toxicity tests shall comply with the following endpoints (NOAEC = 100%, “no observable effect concentration (chronic) (“NOEC”)” test \geq IWC). Each set of four toxicity tests shall be one acute and one chronic for each test species. The test results shall be submitted to DEQ within six weeks of the latest sampling date.

Closure of the Old Plant Lagoon #1

6. **By November 30, 2006**, Massanutten shall complete the closure of Lagoon #1 and request a post-closure inspection and amend the Facility site deed to indicate that a closed sewage lagoon exists on the property.

I&I Reduction Studies in the Collection System.

7. **By December 31, 2005**, Massanutten shall complete repairs identified in Area 1 (sub-basin 7) as prioritized in the I&I studies.
8. **By December 31, 2005**, Massanutten shall complete TV studies to identify specific problem areas in Area 3 (sub-basins 3, 10, and 11) (referenced in the maps submitted to DEQ on October 9, 2003) as determined in the initial inspections.
9. **By June 30, 2006**, Massanutten shall complete flow measurement studies of the problem areas in Area 4 (referenced in the maps submitted to DEQ on October 9, 2003) as determined in the initial inspections.
10. **By December 31, 2006**, Massanutten shall complete any necessary TV studies to identify problem areas in Area 4.
11. **By December 31, 2006**, Massanutten shall complete repairs identified in Area 3 (sub-basins 3, 10, and 11) as prioritized in the I&I studies.
12. **By June 30, 2007**, Massanutten shall complete repairs identified in Area 4 as prioritized in the I&I studies.

Collection System Management Plan.

13. **By January 1, 2007**, Massanutten shall submit to DEQ for review and approval its plan for conducting future ongoing I&I work and the annual budget for the next three years that will be allocated to conduct that work. Massanutten shall respond to any questions concerning the plan within 30 days or receipt of written comments.

Reporting Requirements

14. Massanutten shall submit quarterly progress reports to DEQ, with the first report being **due January 10, 2006**. Subsequent Progress Reports will be due **by April 10, July 10, October 10 and January 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The quarterly progress reports shall contain:

- a. a summary of all work completed since the previous progress report in accordance with the Order;
 - b. a projection of the work to be completed during the upcoming six months in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.
15. No later than **14 days** following a date identified in the above schedule of compliance Massanutten shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the schedule item. In the case of noncompliance the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled items.